

United States Senate

WASHINGTON, DC 20510-4606

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COMMERCE, SCIENCE, AND
TRANSPORTATION

BUDGET

RULES AND ADMINISTRATION

August 28, 2009

Ms. Joyce K. Frank
Acting Director, Office of Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 3426 ARN
Washington, DC 20460

Dear Ms. Frank,

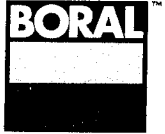
I have recently been contacted by Mr. Gary Shelton of San Antonio, Texas. Attached please find a copy of that correspondence. I would appreciate it if you could look into this matter and provide me with an appropriate response. Thank you.

Sincerely,



MARK R. WARNER
United States Senator

MRW/mm



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July 21, 2009

BORAL MATERIAL TECHNOLOGIES INC.
45 Northeast Loop 410, Suite 700
San Antonio, TX 78216
Phone (210) 349-4069
Fax (210) 349-8512

Dear Senator Mark R. Warner:

Boral Material Technologies Inc. (BMTI) is a marketer of fly ash and coal combustion products, with more than four decades of experience marketing to the concrete industry. In addition, BMTI maintains a standardized, consolidated and proactive approach to ensure that a safe and healthful work environment is preserved, and emphasizes its commitment to being a responsible steward with respect to the safety and health of the environmental impact of its operations and products. BMTI embraces the principle of sustainable development through meeting the needs of the present without compromising the ability of future generations to meet their own needs. We recognize that the community expects responsible environmental, health and safety stewardship.

The U.S. Environmental Protection Agency is considering increasing the level of regulation related to coal ash by potentially designating it as a "hazardous waste". Any "hazardous waste" designation of coal ash would create serious negative impacts for our country.

Coal ash is a byproduct created by the combustion of coal for generation of electricity. Currently about 50% of the electricity generation in the U.S. comes from the combustion of coal. The most recent data available from the American Coal Ash Association (ACAA) indicates that over 130 million tons of coal ash was produced in 2007.

Coal ash does not meet any of the thresholds established by Resource Conservation and Recovery Act to qualify as a hazardous waste. Decades of research and study as well as formal regulatory determinations by the EPA in 1993 and 2000 have concluded that this material is non-hazardous.

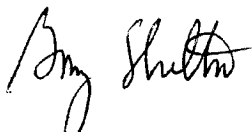
Labeling coal ash as a hazardous waste, even if for the limited purpose of regulating its disposal, would have severe impacts on our economy and environment without providing material improvement in the protection of public health and safety. Major impacts would include the following:

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- Recycling or “beneficial use” of coal ash would virtually stop if it was designated “hazardous”. According to 2007 ACAA data, 43% of the 130 million tons of coal ash were recycled and therefore diverted from disposal in landfills or impoundments. This means not only less land-filling but less extraction and processing of virgin materials.
- Greenhouse gas emissions would increase as fly ash would not be used to replace Portland cement in concrete mixtures. Recent data shows that up to 15 million tons of CO2 emissions were avoided in 2007 because of the use of fly ash in lieu of Portland cement in various applications and nearly 120 million tons avoided since 2000.
- Many state regulations prohibit the use of a material designated as hazardous for beneficial use. It is expected that negative public perception of hazardous materials would virtually halt acceptance of products containing coal ash should they be designated as hazardous wastes. Utilities would be required to acquire significant amounts of property for disposal of coal ash no longer beneficially used. In addition to land acquisition, permitting new sites has proven to be a lengthy and costly process even for non-hazardous solid waste disposal sites, let alone hazardous wastes. The costs for land acquisition and permitting would be passed on to consumers. Our economy cannot sustain such additional burdens in these times of economic turmoil.

Your help is needed in asking EPA not to designate coal ash as a hazardous waste. Coal ash disposal standards can be addressed without unnecessarily stigmatizing this resource with a track record of safe beneficial use as a preferred alternative to disposal. The decades of coal ash contributions to improving both our environment and economy must be allowed to continue.

Sincerely,



Gary Shelton

President

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Washington, D.C. 20460
Telephone: 202-564-4700
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